

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of

Use of Portions of Returned 2 GHz Mobile  
Satellite Service Frequencies

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IB Docket No. 05-221

**REPLY COMMENTS OF ICO SATELLITE SERVICES G.P.**

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Date: August 15, 2005

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**REPLY COMMENTS**

ICO Satellite Services G.P. (“ICO”) submits these reply comments regarding the *Second Public Notice* seeking comment on various options for redistributing or reallocating one-third, or 13.33 MHz, of the spectrum allocated to 2 GHz mobile satellite service (“MSS”).<sup>1</sup>

**I. ICO HAS DEMONSTRATED ITS COMMITMENT TO LAUNCHING A 2 GHz MSS SYSTEM BY 2007, BUT REQUIRES ADEQUATE SPECTRUM TO SUPPORT THE LONG-TERM OPERATIONS OF THE SYSTEM**

As one of the two remaining 2 GHz MSS licensees, ICO is poised to launch its next-generation 2 GHz MSS system by 2007. ICO is committed, and required by the Commission’s

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<sup>1</sup> See FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-134 (June 29, 2005) (“*Second Public Notice*”). Pursuant to a separate public notice, the Federal Communications Commission (“FCC” or “Commission”) also sought comment on its proposal to modify the 2 GHz MSS licenses of ICO and TMI under Section 316 to allow each licensee access to at least 13.33 MHz of spectrum, or a third of the spectrum allocated to 2 GHz mobile satellite service (“MSS”). See FCC Public Notice, *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, FCC 05-133 (June 29, 2005) (“*First Public Notice*”). For ease of reference, the terms “licenses” and “licensees,” with respect to 2 GHz MSS, will refer to FCC authorizations to provide 2 GHz MSS and the parties that hold those authorizations, regardless of whether the authorization is a U.S. satellite license or a letter of intent authorization granting a reservation of spectrum to a foreign-licensed satellite system. All filings submitted in this proceeding will hereinafter be short cited.

milestone requirements, to launch its 2 GHz MSS system by July 17, 2007.<sup>2</sup> In fact, ICO today closed a \$650 million debt financing transaction that will significantly support the funding needed to launch its 2 GHz MSS system within the next two years. The Commission has determined that ICO completed the contract execution and critical design review milestones for its geostationary satellite orbit (“GSO”) system.<sup>3</sup> In addition, ICO has completed the first two milestones required under its revised 2 GHz MSS milestone schedule, and has commenced physical construction of its GSO system ahead of schedule.<sup>4</sup> This record of timely milestone compliance demonstrates ICO’s commitment to launching its system by 2007 and dispels any speculation that 2 GHz MSS will not be deployed in a timely manner.

ICO’s efforts to expedite the delivery of 2 GHz MSS to the public would be for naught, however, if the Commission fails to provide regulatory certainty and to assign adequate spectrum to support the long-term operations of 2 GHz MSS systems. It is undisputed that ICO and a number of other 2 GHz MSS proponents consistently have sought access to up to 2 x 15 MHz of spectrum for each operator, long before the Commission adopted rules for ancillary terrestrial component service. Adequate spectrum is the single critical remaining input that will allow ICO to compete successfully in the MSS market and justify its up-front investment in the MSS

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<sup>2</sup> See *ICO Satellite Services, G.P.*, D.A. 05-1504, ¶ 38 (May 24, 2005) (“*ICO Modification Order*”)

<sup>3</sup> *Id.* ¶¶ 22-23.

<sup>4</sup> See Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOI-19970926-00163 (July 19, 2005); Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOI-19970926-00163 (July 25, 2005); Letter from Suzanne Hutchings Malloy, Senior Regulatory Counsel, ICO to Marlene H. Dortch, Secretary, FCC, File No. SAT-LOI-19970926-00163 (July 28, 2005). ICO also met the first four milestones required for its previously authorized nongeostationary satellite orbit system. See *ICO Modification Order*, ¶¶ 4, 8 and 10.

system. Now that ICO is well advanced in the construction of its system and has raised substantial funding to support that mission, the Commission must not deprive ICO of the spectrum necessary to ensure its commercial viability and success.

## **II. REDISTRIBUTION OF 2 GHz MSS SPECTRUM TO ICO AND TMI IS THE ONLY OPTION THAT WILL SATISFY BROADBAND, PUBLIC SAFETY, AND HOMELAND SECURITY NEEDS WITHIN THE NEXT TWO YEARS**

The record demonstrates strong support for preserving the existing 2 GHz MSS spectrum allocation. As ICO, TMI/TerreStar, and many other parties noted, the existing 2 GHz MSS spectrum allocation is critical to facilitating MSS deployment and to ensuring that the Commission's broadband, public safety, homeland security, competition, and spectrum goals will be achieved expeditiously and effectively.<sup>5</sup> In fact, no commenter disputes that redistributing the remaining third of the 2 GHz MSS spectrum allocation to the existing 2 GHz MSS licensees is the *only* option that will ensure deployment of service to satisfy broadband, public safety, and homeland security needs within the next two years, thus achieving the Administration's goal of providing broadband access to all Americans by 2007.

As ICO and TMI/TerreStar also noted, other options for redistributing or reallocating 2 GHz MSS spectrum would require additional, lengthy rulemaking and licensing proceedings that easily would extend well beyond 2007.<sup>6</sup> No commenter disputes that, under any of these other options, service is unlikely to commence for at least another five or six years, if not more.

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<sup>5</sup> See ICO Comments at 1-2; TMI/TerreStar Comments at 6-7; Satellite Industry Association Comments at 2-4; Alcatel Comments at 1; Boeing Comments at 1-3; Hughes Comments at 3-6; Lockheed Martin Comments at 1; Loral Comments at 2; Comments of Microwave Circuits Inc. and Advanced Manufacturing Technology Inc. at 2; Globalstar Comments at 5-8; Inmarsat Comments, Exhibit A (Inmarsat Comments filed in IB Dkt. No. 05-220), at 7-9.

<sup>6</sup> See ICO Comments at 6-7; TMI/TerreStar Comments at 20.

### **III. PARTIES SEEKING A FURTHER REALLOCATION OF 2 GHz MSS SPECTRUM FAIL TO MEET THEIR BURDEN OF JUSTIFYING A REVERSAL OF THE FCC'S ESTABLISHED 2 GHz MSS ALLOCATION POLICIES**

To the extent that parties seek a reallocation of more than 13.33 MHz of 2 GHz MSS spectrum,<sup>7</sup> the Commission summarily should dismiss these requests as outside the scope of this proceeding, which is limited to an examination of the options for redistributing or reallocating only 13.33 MHz of 2 GHz MSS spectrum.<sup>8</sup> The Commission also should reject requests to reallocate up to 13.33 MHz of 2 GHz MSS spectrum. Less than a year ago, the Commission reaffirmed its decision to preserve 40 MHz of spectrum for 2 GHz MSS,<sup>9</sup> and parties seeking a reversal of that decision thus bear the burden of justifying any sudden departure from the Commission's established 2 GHz MSS allocation policies. Rather than meeting their burden, these parties inexplicably attempt to shift the burden to require 2 GHz MSS licensees to re-establish the public interest benefits of retaining the existing 2 GHz MSS allocation.<sup>10</sup>

Moreover, these parties urge the Commission to commence a rulemaking to consider reallocating the returned 2 GHz MSS spectrum, but fail to take the opportunity presented by this proceeding to introduce record evidence demonstrating the public interest benefits of a reallocation.<sup>11</sup> For example, CTIA, Cingular, United States Cellular, and Intel fail to substantiate terrestrial wireless carriers' need for additional spectrum or the lack of available, alternative

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<sup>7</sup> See CTIA Comments at 1; Cingular Comments at 6; United States Cellular Comments at 2; Sirius Comments at 2.

<sup>8</sup> See *Second Public Notice* at 1.

<sup>9</sup> See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz*, Sixth Report and Order, 19 FCC Rcd 20720, ¶ 96 (2004).

<sup>10</sup> See CTIA Comments at 3-9; Cingular Wireless Comments at 2-5; Sirius Satellite Radio Comments at 8-10; Total RF Marketing, Inc. Comments at 3-5.

<sup>11</sup> Total RF Marketing, Inc. Comments at 6-7;

spectrum.<sup>12</sup> Similarly, the American Petroleum Institute (“API”) declares that additional spectrum would be useful “to enhance the communications capabilities of CII [critical infrastructure industry] companies,” but fails to demonstrate that 2 GHz MSS spectrum would be particularly suitable for that purpose or that the existing supply of licensed and unlicensed spectrum is inadequate to satisfy CII needs.<sup>13</sup> In fact, API acknowledges that its “member companies have sought to meet these needs with unlicensed operations.”<sup>14</sup> API further concedes that the new 3650 MHz band allocation “could, potentially, be used to provide the type of IP-based applications [that CII companies seek to offer].”<sup>15</sup>

Additionally, Sirius speculates that 2 GHz MSS spectrum is “ideally suited” for satellite digital audio radio service (“SDARS”), but offers no technical analysis to show that its SDARS system, which currently operates at 2320-2332.5 MHz, feasibly could operate using noncontiguous spectrum within the 2 GHz MSS frequency bands.<sup>16</sup> In fact, Sirius proposes to use half of the returned 2 GHz MSS spectrum for its *terrestrial* repeater operations, rather than for its primary *satellite* service.<sup>17</sup>

Furthermore, the Society of Broadcast Engineers, Inc. (“SBE”) and Total RF Marketing, Inc. (“Total RF”) propose a reallocation of 2 GHz MSS spectrum for broadcast auxiliary services

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<sup>12</sup> See CTIA Comments at 9-12; Cingular Wireless Comments at 6-7; United States Cellular Corp. Comments at 3-5; Letter from Peter K. Pitsch, Intel Corp., to Marlene H. Dortch, Secretary, FCC, Attachment (Reply Comments filed in IB Dkt. No. 05-220), at 6-10.

<sup>13</sup> API Comments at 3-6.

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Sirius Satellite Radio Comments at 10-12.

<sup>17</sup> *Id.* at 11.

(“BAS”),<sup>18</sup> but fail to acknowledge that BAS licensees already have access to at least 118 MHz of spectrum.<sup>19</sup> They also offer no compelling justification for reversing the Commission’s well-settled decision to reduce the BAS allocation in the 2 GHz band and to reallocate some of that spectrum for MSS.<sup>20</sup> In fact, SBE concedes that “it is now too late ... to again change the 2 GHz TV BAS band plan” and that any change in the 2 GHz BAS band plan “would actually be counter-productive.”<sup>21</sup>

#### **IV. REDISTRIBUTION OF 2 GHz MSS SPECTRUM PURSUANT TO A NEW PROCESSING ROUND LIKELY WOULD CONFER ADDITIONAL SPECTRUM UPON MSS INCUMBENTS WITH SUBSTANTIAL SPECTRUM HOLDINGS**

Although Inmarsat and Globalstar support preserving the existing 2 GHz MSS allocation, they are the only two parties seeking a redistribution of the available 2 GHz MSS spectrum to additional licensees pursuant to a new processing round.<sup>22</sup> Inmarsat and Globalstar, however, should be among the last to receive any additional 2 GHz MSS spectrum. As ICO noted, Inmarsat is authorized to use up to 66 MHz of L-band spectrum, subject to coordination, and apparently has coordinated approximately 20 MHz of spectrum, if not more, for its own use.<sup>23</sup>

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<sup>18</sup> See SBE Comments at 3; Total RF Comments at 6-7.

<sup>19</sup> See *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Third Report and Order and Third Memorandum Opinion and Order, 18 FCC Rcd 23638, ¶ 15 (2003).

<sup>20</sup> See *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315, ¶ 13 (2000).

<sup>21</sup> See SBE Comments at 3. SBE merely proposes to reallocate 12 MHz of 2 GHz MSS spectrum for use by low power auxiliary BAS stations, but fails to demonstrate the lack of available, alternative spectrum to support those operations.

<sup>22</sup> See Inmarsat Comments at 25-29; Globalstar Comments at 10-13.

<sup>23</sup> See ICO Comments at 13.

Similarly, Globalstar has access to 27.85 MHz of L-band and S-band spectrum.<sup>24</sup> Thus, commencing a new 2 GHz MSS processing round is unlikely to achieve anything more than awarding spectrum to MSS incumbents already endowed with substantial spectrum holdings. Moreover, Inmarsat and Globalstar should not be rewarded with additional 2 GHz MSS spectrum when each already received an opportunity to acquire the spectrum during the last 2 GHz MSS processing round, but either failed to pursue its license application or failed to implement a 2 GHz MSS system as required by the Commission's milestone requirements. In any event, the spectrum holdings of existing MSS providers demonstrate that 20 MHz of spectrum is a reasonable and equitable amount of spectrum to assign to the remaining 2 GHz MSS licensees.

## V. CONCLUSION

Based upon the foregoing, ICO urges the Commission immediately to modify ICO's and TMI's 2 GHz MSS spectrum reservations to allow each party to access 20 MHz of spectrum, subject to the outcome of the pending appeals of the 2 GHz MSS license cancellations.

Respectfully submitted,

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August 15, 2005

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<sup>24</sup> See *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, 19 FCC Rcd 13356, ¶¶ 1, 17 (2004).



## **CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2005, a copy of the foregoing **REPLY COMMENTS** was served by electronic mail upon the following:

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